

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

LULA WILLIAMS, GLORIA TURNAGE,  
GEORGE HENGLE, DOWIN COFFY, and  
FELIX GILLISON, JR., *on behalf of themselves*  
*and all individuals similarly situated,*

Civil Case No. 3:17-cv-00461-REP

Plaintiffs,

v.

BIG PICTURE LOANS, LLC; MATT MARTORELLO;  
ASCENSION TECHNOLOGIES, INC.;  
DANIEL GRAVEL; JAMES WILLIAMS, JR.;  
GERTRUDE MCGESHICK; SUSAN MCGESHICK;  
and GIIWEGIIZHIGOOKWAY MARTIN,

Defendants.

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**DEFENDANTS BIG PICTURE LOANS AND ASCENSION TECHNOLOGIES'  
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

Specially Appearing Defendants<sup>1</sup> Big Picture Loans and Ascension Technologies move this Court pursuant to Federal Rule of Civil Procedure 12(b)(1) for an order dismissing the

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<sup>1</sup> A defendant does not submit to the jurisdiction of this Court by filing a motion to dismiss. *Hunt v. Calhoun County Bank, Inc.*, 8 F. Supp. 3d 720, 726 (E.D. Va. 2014). See also *Tomai-Minogue v. State Farm Mut. Auto. Ins. Co.*, 770 F.2d 1228, 1233 (4th Cir.1985) (recognizing that a defendant may enter a special appearance to challenge personal jurisdiction). A sovereign's limited appearance in legal proceedings for the purpose of seeking dismissal for lack of jurisdiction does not waive any claims to sovereign immunity. See e.g., *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp.2d 995, 1000 (W.D. Wis. 2004) ("[Sovereign] entities may intervene for a limited purpose such as moving to dismiss the lawsuit for failure to join an indispensable party without waiving their sovereign immunity."); *McClendon v. U.S.*, 885 F.2d 627, 630 (9th Cir.1989) ("[T]erms of [a sovereign's] consent to be sued in any court define that court's jurisdiction to entertain the suit."") (quoting *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 539 (10th Cir.1987) (quoting *U.S. v. Testan*, 424 U.S. 392, 399 (1976)); cf. *Richardson v. Fajardo Sugar Co.*, 241 U.S. 44, 47 (1916) (when a sovereign government has appeared, answered a

Plaintiffs' Class Action Complaint. The reasons in support of this motion are set forth in the accompanying memorandum of law, which is incorporated herein by reference.

**BIG PICTURE LOANS, LLC, ASCENSION  
TECHNOLOGIES, INC.**

By:/s/David N. Anthony

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complaint, set a trial date and defended the claim for several months, rather than merely appeared for the purposes of moving to dismiss, it has waived its right to challenge jurisdiction).

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of September, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will then send a notification of such filing (NEF) to the following:

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